

Office of the Secretary, Interior

§ 46.235

disputes, and the use of joint lead agencies.)

(c) In some cases, the Responsible Official may establish a joint lead relationship among several Federal agencies. If there is a joint lead, then one Federal agency must be identified as the agency responsible for filing the environmental impact statement with EPA.

§ 46.225 How to select cooperating agencies.

(a) An “eligible governmental entity” is:

(1) Any Federal agency that is qualified to participate in the development of an environmental impact statement as provided for in 40 CFR 1501.6 and 1508.5 by virtue of its jurisdiction by law, as defined in 40 CFR 1508.15;

(2) Any Federal agency that is qualified to participate in the development of an environmental impact statement by virtue of its special expertise, as defined in 40 CFR 1508.26; or

(3) Any non-Federal agency (State, tribal, or local) with qualifications similar to those in paragraphs (a)(1) and (a)(2) of this section.

(b) Except as described in paragraph (c) of this section, the Responsible Official for the lead bureau must invite eligible governmental entities to participate as cooperating agencies when the bureau is developing an environmental impact statement.

(c) The Responsible Official for the lead bureau must consider any request by an eligible governmental entity to participate in a particular environmental impact statement as a cooperating agency. If the Responsible Official for the lead bureau denies a request, or determines it is inappropriate to extend an invitation, he or she must state the reasons in the environmental impact statement. Denial of a request or not extending an invitation for cooperating agency status is not subject to any internal administrative appeals process, nor is it a final agency action subject to review under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*

(d) Bureaus should work with cooperating agencies to develop and adopt a memorandum of understanding that includes their respective roles, assign-

ment of issues, schedules, and staff commitments so that the NEPA process remains on track and within the time schedule. Memoranda of understanding must be used in the case of non-Federal agencies and must include a commitment to maintain the confidentiality of documents and deliberations during the period prior to the public release by the bureau of any NEPA document, including drafts.

(e) The procedures of this section may be used for an environmental assessment.

§ 46.230 Role of cooperating agencies in the NEPA process.

In accordance with 40 CFR 1501.6, throughout the development of an environmental document, the lead bureau will collaborate, to the fullest extent possible, with all cooperating agencies concerning those issues relating to their jurisdiction and special expertise. Cooperating agencies may, by agreement with the lead bureau, help to do the following:

(a) Identify issues to be addressed;

(b) Arrange for the collection and/or assembly of necessary resource, environmental, social, economic, and institutional data;

(c) Analyze data;

(d) Develop alternatives;

(e) Evaluate alternatives and estimate the effects of implementing each alternative; and

(f) Carry out any other task necessary for the development of the environmental analysis and documentation.

§ 46.235 NEPA scoping process.

(a) Scoping is a process that continues throughout the planning and early stages of preparation of an environmental impact statement. Scoping is required for an environmental impact statement; scoping may be helpful during preparation of an environmental assessment, but is not required (see paragraph 46.305(a) Public involvement in the environmental assessment process). For an environmental impact statement, bureaus must use scoping to engage State, local and tribal governments and the public in the early identification of concerns, potential